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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,772	09/18/2001	Toan Trinh	6009RXD	8802

27752 7590 12/05/2005

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CINCINNATI, OH 45224

EXAMINER
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HARDEE, JOHN R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/954,772

Applicant(s)

TRINH ET AL.

Examiner

John R. Hardee

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 124 and 125 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 124 and 125 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 04192005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant is reminded that a restriction requirement is in place. Claims 124 and 125 have been searched and examined only to the extent that they read on the elected invention, 7-carbon diols. *No claims can pass to issue until all non-elected subject matter is deleted from the claims.*

### ***Double Patenting***

2. Claims 124 and 125 remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2 and 11, at least, of US patents 6,369,025 B1 and 6,323,172 B1 for the reasons of record in the previous office action.

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 124 and 125 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Katznellenbogen et al., Martin et al., Eliel et al., and Green et al. for the reasons of record in the previous office action.

5. Claims 124 and 125 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2,540,901. The reference discloses fabric softening compositions which are

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miscible in all proportions with cold water (p. 1, 1<sup>st</sup> para.) Compositions according to the invention comprise 10-50% of a glycol of up to 8 carbons which may be branched or linear (p. 3, lines 23-25.) The specific 7-carbon branched glycols recited by applicant are not disclosed. However, it would have been obvious at the tie that the invention was made to make such diols, because the reference teaches that 7-carbon branched diols generally are useful as solvents for fabric softening compositions.

6. Claims 124 and 125 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2,540,901 in view of Katznellenbogen et al., Martin et al., Eliel et al., and Green et al. The references are summarized above. The specific 7-carbon branched glycols recited by applicant are not disclosed. However, it would have been obvious at the tie that the invention was made to make such diols, because the reference teaches that 7-carbon branched diols generally are useful as solvents for fabric softening compositions, and the Martin, Eliel and Green references disclose 7-carbon diols which are simple positional isomers of the recited diols.

### ***Response to Arguments***

7. Applicant's arguments filed February 4, 2004 have been fully considered but they are not persuasive. Applicant argues that, while the examiner believes that the presently claimed 7-carbon diols are simple structural isomers of those disclosed in the prior art, the prior art does not motivate the preparation of the presently claimed diols. This is not persuasive because the criterion for obviousness is not whether the references motivate the preparation of these diols; it is whether the person of ordinary skill would believe

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that the presently claimed diols have the same or similar properties as those of the prior art. The examiner maintains that this is the case. Such may be rebutted by applicant by preparing and comparing the diols of the prior art with those presently claimed.

Applicant's citation of Grabiak and Mowry are not on point, as the present fact pattern involves only differences in methyl branching between the 7-carbon diols of the prior art and those presently claimed.

8. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on April 19, 2005 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (703) 305-5599. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (703) 308-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to read 'J. Hardee', with a stylized, cursive script.

John R. Hardee  
Primary Examiner  
June 30, 2005